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ON 5/16/06

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May 16, 2006

Via ECF

Honorable Allyne R. Ross
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

The court adopts the recommendation requested in this letter grants the 30 day extension of time to surrender.

So ordered.

VSPJ

5/22/06

cc: Counsel

Re: United States v Lloyd McKend
Case Number CR 03-1368 (ARR)

Dear Judge Ross:

As you may recall, on April 13, 2006 you sentenced Lloyd McKend to 21 months incarceration. At that time I had requested that the Court recommend a Federal Prison Camp, which is a minimum-level security institution. (A copy of the Transcript of Sentence is enclosed herein) According to my research, it is the Federal Bureau of Prisons' policy to place an individual in the least restrictive facility for which he or she qualifies. I believe Lloyd McKend qualifies for such a facility.

The Court's Judgment states that the recommendation is "that the defendant be housed at a facility in the metropolitan area." Unfortunately, on today's date I learned that Mr. McKend has been designated to the Metropolitan Detention Center in Brooklyn. This is a restrictive administrative facility, where most of the inmates are awaiting trial or sentencing.

The defendant's voluntary surrender date is May 24, 2006. I would respectfully ask the court to amend the Judgment to recommend a Federal Prison Camp in close proximity to the defendant's home. I would also ask that the Court extend the date for the defendant's surrender for 30 days, which would allow the Bureau of Prisons time to designate a Camp.

C/M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,
Plaintiff,

03 CR 1368

versus

United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

LLOYD McKEND,

DEFENDANT.

----------x

April 13, 2006
11:25 a.m.

TRANSCRIPT OF SENTENCE
Before: HON. ALLYNE R. ROSS,
DISTRICT COURT JUDGE

APPEARANCES

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Assistant United States Attorney

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Proceedings recorded by mechanical stenography, transcription by CAT.

THE COURT: Turning first to the advisory guidelines, the parties agree that defendant's base offense level is 30, that he is entitled to a safety valve deduction of two levels and a deduction for acceptance of responsibility of three levels. The only guidelines dispute is whether he is entitled to a minor role adjustment only or to a adjustment for minimal role.

The scheme in which McKend took part was organized by cooperating coconspirator Tyrone Brown under pressure from Persaud, a Guyanese cocaine supplier.

In May of 2003, Brown contacted cooperating coconspirator Selwyn Smith and the two arranged a cocaine importation scheme on North American Airlines planes originating in Guyana and landing at John F. Kennedy Airport. The cocaine would be secreted under the ice in the passenger compartment of the plane, a method devised by Smith.

Smith, an employee of Flying Foods at JFK, whose job it was to coordinate flights, decater planes and drive a Flying Foods van decatered among others, North American flights and was thus able to off-load the cocaine shipments and remove them from the airport to his apartment, ultimately delivering them at Brown's direction to a drug contact in New York.

Brown testified that between May and November of 2003, the scheme was responsible for two to three shipments of

cocaine per week for an approximate total number of 60 shipments. According Smith's testimony, the shipments occurred twice a week for approximately three to four months for a total of approximately 25 to 30 shipments. Both Brown and Smith testified that Smith recruited his cousin, defendant Lloyd McKend, who had held the same job as Smith's at Flying Foods, to assist Smith in performing his duties in the scheme.

According to Smith, he, Smith, received $30,000 per shipment and from that, he paid McKend an unspecified amount for McKend's assistance. Neither Brown nor Smith testified to the number of occasions on which McKend gave Smith his assistance.

At defendant's proffer with the government, which the government has accepted as a candid account of his involvement, Mr. McKend acknowledged that his cousin Selwyn Smith recruited him into the scheme to import cocaine from Guyana via North American flights, secreting it in the ice bin of the plane's passenger compartment.

Defendant said that he assisted Smith on approximately four to five occasions by providing him the schematics of the aircraft and the time of arrival of the flights. He also admitted accompanying Smith to a plane several times in a separate car and watching him retrieve the cocaine from the ice bucket and drive it back to Flying Foods before removing it from the airport.

McKend told the government that he was paid two to $3,000 on each occasion, receiving a total of $12,000 for his involvement in the conspiracy.

In urging that the defendant's role reduction should be limited to a minor one rather than a minimal one the government characterizes defendant's role as "pivotal" to the venture. It bases this conclusion on defendant's admissions that he provided Smith with the schematics of the arriving North American planes presumably showing the location of the ice bucket in the passenger compartment, and he told Smith of the arrival time of the flights and he accompanied Smith to the quote staging area."

The record, however, is far from clear that McKend's contribution even begins to approach the value and the uniqueness the government would attribute to it. Certainly, McKend's accompanying Smith to the staging area on several occasions was a minimal contribution to the conspiracy at best, especially in the absence of evidence that defendant affirmatively assisted Smith beyond his mere presence on those occasions when he joined him.

Further, the record establishes that McKend and Smith held the identical job positions at Flying Foods. Hence, there is no reason to believe that Smith was not himself in a position to glean the identical intelligence, that is, the location of the ice bin and flight arrival times

of airplanes that he asked his cousin to provide.

Presumably, Smith must have acquired this information on his own with respect to those shipments when he did not involve McKend.

The extremely limited scope of McKend's involvement is also reflected in the payments he received, 2 to $3,000 per shipment as compared with Smith's $30,000 per shipment compensation. That Smith chose to involve his cousin in the conspiracy by assigning to him tasks that Smith could have and presumably did just as easily accomplish on his own seems best explained by a statement made by Brown to another participant in the conspiracy in a taped conversation on October 18, 2003. Brown explained to this coconspirator that Smith "Just use him [that is the defendant Lloyd McKend] sometime to help him out. He tried to hook him up because is his cousin, you understand".

In another intercepted conversation two lays later, Smith and Brown, apparently referring to the defendant -- I can't recall which one of them said it one said, "For his first position, he don't know, you know what I'm saying. We been at this shit since 92."

In sum, I conclude that defendant's role in the conspiracy was at most minimal, warranting a four level deduction notwithstanding the fact that he obviously received information from his cousin about the conspiracy and possibly

even the scope of the conspiracy. This does not reflect on the scope of defendant's role but rather his intimacy with his cousin who communicated the information.

Accordingly, I find that under the advisory guidelines, the defendant's adjusted offense level is 21, which at criminal history category one calls for a range of imprisonment of 37 to 46 months.

I note, however, that even if defendant were not entitled to so great a role reduction under the advisory guidelines, that would not for reasons expressed in this opinion, affect my view of an appropriate sentence under 3553(a), but I have considered the guideline.

Turning to the nature and circumstances of the offense, I have concluded, as is evident from the prior discussion, that defendant's role in this offense was not only a minimal one, in the context of this drug conspiracy and other drug conspiracies of similar nature, defendant's role was an extraordinarily limited one and I view this factor as mitigating seriousness of defendant's offense.

On the other hand, in considering the nature and circumstances of the offense, I have in the case of Mr. McKend, similarly to the other airport employee defendants, considered as an exacerbating factor the fact that defendant made use of his job position at JFK Airport in committing the crime of which he was convicted.

Although I have found that the government failed to present evidence sufficient to find by a preponderance that law enforcement authorities in fact reposed trust in the airport employees, a finding essential to the imposition of the abuse of trust enhancement under the guidelines. There is ample evidence in the record to establish that defendant took advantage of his job in committing this offense, a job though not established to be a repository of trust by law enforcement, is nonetheless a highly sensitive one due to the enhanced societal dangers posed by corruption at a major international port or airport such as John F. Kennedy Airport.

On the whole, while defendant's crime was serious and was exacerbated by the fact that in committing it he took advantage of his sensitive position at a major airport, that seriousness is mitigated somewhat by his dramatically limited role and the fact that no weapon or violence of any kind was committed.

Turning to the history and characteristics of the defendant, Mr. McKend is a 35 year old United States citizen who is divorced but financially supports his ten-year-old daughter and four-year old child. Family members, specifically defendant's parents, both view defendant as an impressionable person. He is very close to his cousin Selwyn Smith and thus easily influenced by him.

As noted above, it is true that the only

coconspirator with whom McKend had any contact is Smith, and that given the conspiracy's lack of need for McKend's services, the only reasonable explanation for his recruitment into the scheme is Smith's misguided desire to "help out" his cousin.

By his own estimation, Smith earned an estimated 750,000 to $900,000 from this scheme, that is $30,000 for each of 25 to 30 shipment, yet there is no evidence that McKend was paid more than a total of $12,000 that he admitted receiving at his proffer.

Letters from family and friends state that defendant -- I'm sorry the defendant has an infant son from a present relationship and has been indispensable to his mother who has suffered a catastrophic stroke. The letters also emphasize how hard working defendant has been to insure that his family is cared for.

Given all the facts and circumstances pertaining to the defendant and his offense, I believe that a sentence of 21 months is sufficient but not unduly severe to accomplish the goals of sentencing enumerated in Section 3553(a).

The crime in which defendant became involved is a serious one but in light of the limitation of defendant's involvement, a prison term of almost two years is ample to serve the goal of just punishment.

Further, the facts and circumstances of this case

point to an extraordinarily low risk of recidivism suggesting that the selected sentence amply serves the goal of specific deterrence and insures that the sentence imposed does not create unwanted disparities.

Under the circumstances, I believe this term of imprisonment is also of sufficient severity to serve as a deterrent to other airport employees who might otherwise succumb to the temptation to corrupt their sensitive positions for pecuniary or other personal gain.

I therefore sentence Mr. McKend to the custody of the Attorney General for a period of 21 months, to be followed by a five year period of supervised release.

As I recall, there is a 5,000-dollar forfeiture, is that correct?

MR. KING: Yes, your Honor. A preliminary order was filed in August.

We ask that it be made part of the J and C.

THE COURT: I will impose a 5,000 dollar forfeiture.

I gather it has already been paid?

MR. KING: Yes, your Honor, it has.

THE COURT: As a special condition of supervised release, I prohibit the possession of a firearm. Unlike the forfeiture, I make a finding that he is unable to pay a fine, but I will impose the mandatory 100-dollar special assessment.

MR. ROTH: Judge, may I ask for a voluntary

surrender?

THE COURT: Yes.

MR. ROTH: I believe the Court has been using May 24th as the date.

THE COURT: Whatever Dennis says.

MR. D'ALESSANDRO: The defendant pled to a third superseding indictment. To the extent there are outstanding counts as to that indictment, I know there are underlying indictments, we move that they be dismissed.

THE COURT: The motion is granted.

Mr. McKend, there are circumstances in which a defendant may appeal the sentence. I don't believe it will apply in your case but if you choose to appeal, a notice of appeal must be filed within 10 days and if you couldn't afford a lawyer, an attorney would be appointed to represent you.

MR. ROTH: Judge, May 24th is acceptable to the Court?

THE COURT: That is fine.

MR. ROTH: One other request.

Would the Court recommend a camp in light of the sentence in close proximity to his home, without a specific facility.

That way --

THE COURT: A camp?

Is that a term of art?

MR. ROTH: A federal prison camp.

THE COURT: That he be designated to a facility as close as possible to his home.

MR. ROTH: Thank you.

(Matter concluded.)